



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute a new contract between Cottage Bakery and the City of Lodi (EUD) that will transition this customer to a standard rate over a three-year period (EUD)

MEETING DATE: November 5, 2003

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a new contract between Cottage Bakery and the City of Lodi (EUD) that will transition this customer to a standard rate over a three-year period.

BACKGROUND INFORMATION: Before the energy crisis of 2001, contracts were undertaken with large industrial customers, including Cottage Bakery, at a time when power costs were substantially below today's costs. Also, when these contracts were undertaken, a non-permanent economic development incentive was part of the contract structure. Some of these contracts were at retail rates on the order of 5 cents a kilowatt-hour and have not changed for over 5 years. These rates are substantially below our cost of power currently, 7 to 8 cents a kilowatt-hour. Other customers have seen substantial bill change in the last two years.

The contract with Cottage Bakery has now expired. The Electric Utility Department (EUD) proposes to transition this customer to a regular EUD rate over a three-year period, (that the customer is eligible for) given their level of consumption. This contract will transition to I-1. The I-1 rate is highly competitive, and is the rate that General Mills is under. The three-year transition period should allow this customer to adjust.

Electric Utility staff has conducted several meetings with representatives of Cottage Bakery in recent weeks to discuss the proposed transition rate contract. This contract was removed from the October 1, 2003 City Council agenda, when five other transition rate contracts were approved, because the president of Cottage Bakery was out of the country on business. Electric Utility staff respectfully recommends approval of this proposed transition rate contract as submitted.

(Note: the contract methodology that specifies the transition is the same across all contracts. The Cottage Bakery contract is attached).

FUNDING: None

Alan N. Vallow
Electric Utility Director

PREPARED BY: Rob Lechner, Manager of Customer Service and Programs

ANV/RL/Ist
C: City Attorney
Finance Director

APPROVED:

Janet Flynn - City Manager

RATE AGREEMENT
BETWEEN
COTTAGE BAKERY
AND
THE CITY OF LODI

This Agreement is made by and between Cottage Bakery ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is a customer whose rate agreement contract between the City has expired; and

WHEREAS, City desires to transition the Customer to their eligible rate schedule over a four year period so as to mitigate the immediate effects of coming under the eligible rate; and

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. **Definitions.** Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is "Facility" is the Customer's facility receiving service as defined in Exhibit A.
- 1.4 "Account" is defined in Exhibit A for the Customer.
- 1.6 "Parties" are collectively Customer and City.

- 1.7 "kWh" is a kilowatt-hour, an energy charge-billing unit.
- 1.8 "billing cycle" is the monthly bill.
- 1.9 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.
- 1.10 "eligible rate" is the scheduled rate at which the Customer would qualify given historical consumption as per accounts totaled in Exhibit A.
- 1.11 "totalization" is the aggregation of individual meter data so as to create a single billed account under a single rate schedule.
- 1.12 "current actual average rate winter/summer" is the average based on the total energy charges, demand charges and special discounts totaled divided by total energy (kWh) that apply to the contract accounts defined in Exhibit A for a typical actual monthly bill in the season designated for the annual period before the start of the anticipated phase of rate transition.
- 1.13 "current eligible average rate winter/summer" is the average based on the total energy charges, demand charges and market cost adjustments and other normal applicable charges totaled divided by total energy (kWh) that apply to the contract accounts defined in Exhibit A for the eligible rate utilizing actual billed energy and demand available from the current actual bill average rate determination by season.

Section 2. Rate Application.

2.1 The billing cycle charge for the Customer shall transition to the eligible rate for the Facilities and Accounts defined in Exhibit A over a four year phased transition. Exhibit A also defines what Facilities and Accounts will be totaled or treated as individual facilities for billing purposes. There shall be four phases to the transition to full billing under the eligible rate as follows:

- **Phase I** October 1, 2003 to September 30th, 2004, Phase Setting = 3
- **Phase II** October 1, 2004 to September 30th, 2005, Phase Setting = 3
- **Phase III** October 1, 2005 to September 30th, 2006, Phase Setting = 2
- **Phase IV** October 1, 2006 on (the customer would then be on the targeted rate)

The first three phases will provide a transition rate that is at a discount of the current eligible. At the fourth phase the Customer will be at the eligible rate and the contract will expire with normal rate procedures applying. In the two months before the commencement of Phases I to III, a determination of the phased rates will be made. The current average winter rate and average summer rate will be determined. The average eligible winter rate and summer rate will be determined for the eligible rate schedule. The transition rates will be the eligible rate schedule by season discounted by the transition percentage. The transition percentage is calculated by season and is determined as follows:

Where “A” equals seasonal average rate;

“E” equals seasonal eligible rate;

“P” equals phase setting from above;

“/” Is a divide operator;

“*” Is a multiply operator;

“^” Is a to the power operator;

$$\text{Transition Percentage} = (A * (E/A)^{(1/P)})/E$$

The transition percentage holds only for the coming phase. A new transition percentage is determined before the start of each phase. If the transition percentage exceeds 100%, the eligible rates apply. The City shall provide the Customer a copy of the determined transition discounted rates before the start of a new transition Phases I to III.

Section 3. Term of Agreement

- 3.1 Upon signing by all Parties, this Agreement shall be binding for bills rendered on or after October 1st, 2003, and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through September 30th, 2006.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.
- 3.3 This Agreement cannot be terminated without mutual consent of the Parties.

Section 4. Force Majeure.

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.

The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This sub-paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments.

5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments.

6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability.

7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law

8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Counterparts.

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings.

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR
CITY OF LODI
1331 SOUTH HAM LANE
LODI CA 95242-3995

To Customer: COTTAGE BAKERY
40 E. NEUHARTH DRIVE
LODI, CA 95240

Section 12. Non-waiver.

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority

13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI

H. Dixon Flynn
City Manager

Date

COTTAGE BAKERY

Terry Knutson
President

Date

APPROVED AS TO FORM:

Randall A. Hays
City Attorney

ATTEST:

Susan J. Blackston
City Clerk

Exhibit A

Customer Cottage Bakery

Current Contract Accounts

Rate	Voltage	Meter	Account #	Location Designation	Location Address
C	Secondary	35928	4553-4	40 E. Neuharth Dr.	All meters are
D1	Secondary	29871	4553-4	40 E. Neuharth Dr.	labeled according
D2	Secondary	29872	4553-4	40 E. Neuharth Dr.	to letters
D3	Secondary	29873	4553-4	40 E. Neuharth Dr.	
B	Secondary	30013	4553-4	40 E. Neuharth Dr.	

If eligible rate does not have a secondary rate, the rate will be the primary rate plus 5%

Transition rate discount does not apply to new facility

Rate	Primary/Secondary	Meter	Account #	Location Designation	Location Address
I-1	Secondary	35784	49663-8	Inside Facility S. End	1831 S. Stockton

RESOLUTION NO. 2003-211

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
A CONTRACT BETWEEN THE CITY OF LODI AND
COTTAGE BAKERY TRANSITIONING CUSTOMER
TO STANDARD ELECTRIC UTILITY RATE OVER A
THREE-YEAR PERIOD

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a contract between the City of Lodi and Cottage Bakery, transitioning Cottage Bakery to a standard electric utility rate over a three-year period.

Dated: November 5, 2003

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I hereby certify that Resolution No. 2003-211 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 5, 2003, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, Land, and
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


SUSAN J. BLACKSTON
City Clerk